

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE B. KEESLING,

Defendant-Appellant.

UNPUBLISHED

October 18, 2005

No. 256982

Cass Circuit Court

LC No. 04-010077-FC

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b, and of being a felon in possession of a firearm, MCL 750.224f. He was sentenced to twenty to forty years for armed robbery, two years for felony-firearm, and two to five years for being a felon in possession of a firearm. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the prosecution failed to introduce evidence sufficient to prove beyond a reasonable doubt that he was the perpetrator of the armed robbery. We disagree.

When reviewing a challenge to the sufficiency of the evidence in a jury trial, this Court must determine whether, viewing the light most favorable to the prosecution, a rational trier of fact could conclude the prosecution proved all the essential elements of the crime beyond a reasonable doubt. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003).

Identity is an element in every criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). In this case, defendant does not contest the occurrence of the armed robbery. Rather, defendant has challenged only the identity element of the crimes for which he was convicted, specifically that he was the perpetrator of the armed robbery.

During the course of the trial, several witnesses, including bank employees and law enforcement officers, identified defendant as the man who robbed the bank. However, both defendant's wife and defendant's friend testified that defendant was in Elkhart, Indiana, at the time of the robbery. According to their testimony, defendant was not physically present in Michigan at the time of the robbery and, therefore, could not have been the perpetrator.

At trial, witnesses identified defendant as the man who robbed the bank, or as looking like the man who robbed the bank. Police witnesses testified that defendant gave a statement admitting to, and describing the robbery. This Court has held that the credibility of identification testimony is a question for the trier of fact. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 181 (2000). Accordingly, this Court should not interfere with the jury's role of determining the credibility of witnesses. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). Therefore, this Court will resolve credibility conflicts in favor of the jury's verdict. *People v McFall*, 224 Mich App 403, 412; 569 NW2d 828 (1997).

Although defendant presented evidence to indicate he could not have committed the armed robbery, we find there was sufficient evidence introduced at trial from which the jury could have found beyond a reasonable doubt that defendant was the perpetrator of the armed robbery.

First, the four bank employees who were present at the time of the robbery testified about the man who robbed the bank. Although the employees gave varying descriptions of the man's height, the employees consistently described the man as wearing a white t-shirt, jeans, a baseball cap, and sunglasses. In addition, the employees testified the robber was holding a small, silver handgun with black handles and that he demanded they place the money in a blue plastic grocery bag. Further, two employees testified the robber had a missing or chipped front tooth and one employee testified the robber had a tattoo on his stomach. At trial, defendant's wife admitted defendant had a missing right front tooth and that he also had a tattoo on his bellybutton. During the trial, three of the employees identified defendant as similar to the man who robbed the bank and one employee positively identified defendant as the man who robbed the bank.

In addition, a person who encountered the robber outside the bank identified defendant at trial as the robber. The person's testimony was consistent with the testimony of the bank employees. The individual testified the robber was wearing a t-shirt and sunglasses and carrying a small silver handgun. Also, according to the individual's testimony, the man left the bank carrying a blue plastic grocery bag full of money.

Not only did witnesses identify defendant as the perpetrator, but defendant identified himself as the perpetrator. Defendant confessed to robbing the bank on two separate occasions. In the statements admitted at trial, defendant not only admitted to robbing the bank, but admitted to wearing a white t-shirt, blue jeans, a black baseball hat and sunglasses during the robbery. He also described the handgun, the pickup truck and the bag used in the robbery. Furthermore, after examining pictures taken from the bank's surveillance cameras, defendant identified himself to officers as the man shown robbing the bank. At trial, officers identified defendant as the man who confessed to robbing the bank.

Furthermore, defendant was present in the courtroom throughout the trial. Therefore, each juror was able to observe defendant and compare his physical features to the witnesses' descriptions of the robber. Jurors were also able to compare defendant to the man shown in both pictures and video footage of the actual robbery. Further, during the course of the trial, defendant was ordered to show the jury the tattoo on his stomach. He was also ordered to put on the hat and sunglasses that were in admitted into evidence.

Based on the identification testimony and the jurors' observations at trial, there was sufficient evidence introduced at trial from which the jury could find beyond a reasonable doubt defendant was the perpetrator of the armed robbery. Although the defense witnesses testified defendant was in Indiana at the time of the armed robbery, the jury's role was to determine the weight to be given that testimony and, because this is ultimately an issue of credibility, we resolve the issue in favor of the jury's verdict.

Considering the evidence presented at trial in the light most favorable to the prosecution and keeping in mind that the credibility of identification testimony is a question for the trier of fact, we believe the prosecution introduced evidence sufficient to permit a rational trier of fact to conclude beyond a reasonable doubt that defendant was the perpetrator of the crimes of which he was convicted.

Affirmed.

/s/ Michael J. Talbot

/s/ Helene N. White

/s/ Kurtis T. Wilder